IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19276 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AARIF BABUBHAI KARVA - Petitioner(s)

Versus

STATE OF GUJARAST & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/11/2005

ORAL JUDGMENT

1. Aarif Babubhai Karva-petitioner has filed this habeas corpus petition under Article 226 of the Constitution of India praying for quashing and setting aside the order of detention dated 27.05.2005 which has been illegal, null and void and also violative of Article 14, 19, 21 and 22 of the

Constitution of India. In fact, petitioner was actually detained on 10.09.2005. the present petition was filed on 19.09.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 23.09.2005 which was made returnable within four week and that is why this matter has come up before this Court.

2. Mr. H.R. Prajapati, learned Advocate for the petitioner has invited my attention to the order of detention dated 27.05.2005 and the grounds supplied therein.

3. Mr. Prajapati, learned Advocate for the petitioner has invited my attention to the solitary offence registered against the detenu at 'A' Division Police Station, Rajkot city being C.R. No.62/2005 dated 19.04.2005 punishable under Section 66B, 65A,E, 116B and 81 of the Bombay Prohibition Act. In that case authority confiscated 102 bottles of English liquor valued at Rs.20,400/- along with one Auto-Rickshaw valued at Rs.10,000/-and one mobile phone valued at Rs.1500/-. In the order of detention

petitioner has been termed as 'Bootlegger' within the meaning of Section 2(b)and also Section 3(1)of the PASA Act.

4. Learned Advocate for the petitioner further stated that the detaining authority has relied on only one Registered Offence and that in his case there is no past conduct reflected in the grounds of detention or there is no antecedent history emerges from the grounds of detention and contemporaneous recored and there is no element of repetition and not proximate in point of time and should have no connection with the conclusion that detention is necessary and therefore, the impugned order may be quashed and set aside.

5. Learned Advocate for the petitioner has placed reliance on the judgment of apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and as regards solitary offence he has relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs.

State of Tamil Nadu and others reported in AIR 2003 SC 971. Learned Advocate for the petitioner also relied on Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.)decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. Learned Advocate for the petitioner has also placed reliance on another Division Bench judgment of this Court (Coram: Acting C.J., C.K. Thakkar and K.M. Mehta,J.)in the case of Ashokbhai Jivraj alias Jivabhai Solanki Vs. Police Commissioner, Surat and Others reported in 2000(1) GLH 393. He has also placed reliance on judgment of this Court (Coram: A.L. DAVE,J.)in the case of Jayanti Nenumel Ramnani Vs. Commissioner of Police Rajkot and Others reported in 2002 (2) GLH 166. He has also relied on judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 (Coram: K.M. Mehta,J.)in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City.

6. Mr. Gohil, learned A.G.P. has tried to support the order of detention and the grounds

supplied therein by the authority in this behalf.

7. I have considered the facts and circumstances of the case and in my view in the instant case detaining authority has failed to substantiate that the alleged antisocial activities of petitioner-detenu adversely affected maintenance of 'public order'. It may be noted that petitioner is alleged to be a 'Bootlegger' within the meaning of Section 2(b) of the Act. But, mere fact that the petitioner-detenu is a 'Bootlegger' he cannot preventively be detained under the provisions of the PASA Act unless as laid down in sub-Section (4) of Section 3 of the Act that his activities are affecting adversely or likely to affect adversely maintenance of 'public order'.

8. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any cogent or credible material on record in this behalf. I have also considered factual and legal aspects emerging

from the record of the petition and considered the rival submissions and the facts of the case and also in view of the decision of the apex Court in the case of Piyush Kantilal Mehta(Supra) and Division Bench judgment of this Court in the case of Ashok Makwana (Supra) and also recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra)the order of detention cannot be sustained and deserves to be quashed and set aside.

9. In the result, this petition is allowed and the order of detention dated 27.05.2005 passed by Commissioner of Police, Rajkot city is hereby quashed and set aside. Aarif Babubhai Karva-petitioner-Detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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